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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN,
Petitioner,

against

THE UNITED STATES OF AMERICA, J. HOWARD McGRATH, the Attorney General for the United States of America, and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE *AMICUS CURIAE*

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Dated: September 30, 1949.

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Opinions Below

Circuit Court—*Savorgnan* v. *United States of America, et al.*, 171 F. 2nd 155 (C. A. 7, 1948). (R. 86).

District Court—*Savorgnan* v. *United States of America, et al.*, 73 F. Supp. 109 (D. C. W. D. Wis., 1947).

Jurisdiction

Petition for a writ of Certiorari was filed on April 8, 1949, and was granted by this Court on May 31, 1949 (337 U. S. 914). Jurisdiction is invoked under 28 U. S. C. A. §1254.

Preliminary Statement

In July, 1947, several months prior to the District Court's decision in the case here for review, the *amicus curiae* commenced an action in the United States District Court for the Southern District of New York for a judgment declaring plaintiff in that case, Margaret Trimble Revedin, to be a citizen of the United States of America. That action and the case now before this Court for review are factually similar in many respects and involve certain identical questions of law. The decision of this Court herein will, accordingly, be of substantial significance in the final determination of the declaratory judgment action commenced by the *amicus curiae*.

The facts of the case here for review are set forth in some detail in Petitioner's Brief, and will be but briefly summarized here.

Petitioner, a native born American citizen, in 1940 became engaged to one Alessandro Savorgnan, a member of the Italian Diplomatic Corps. In view of his status, however, she was, under the then Fascist laws of Italy, unable to marry him without first becoming an Italian national. Accordingly, she took certain steps to obtain a technical Italian citizenship in order to make her marriage possible, and, in December, 1940 married Savorgnan.

The steps taken were the signing of an application for Italian citizenship and the subsequent signing of an "Oath of Allegiance" to the King of Italy. The application and "Oath" were both written in Italian, which language petitioner could not read, write or understand. She assumed that the signing of these documents was but a formal step necessary in obtaining consent of the Italian government to her marriage.

In connection with the signing of these documents, the District Court found, among others, the following facts (R. 64-67):

(a) "The application was made solely for the purpose of obtaining consent from the Italian government to [petitioner's] marriage to Savorgnan * * *."

(b) "* * * she [signed the documents] without any formal proceedings."

(c) "At the time she signed the documents, she had no intention whatsoever of renouncing her allegiance to this country * * *."

(d) "* * * plaintiff relied on her husband's statement and assurance, that by signing the documents * * * she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship."

(e) "At the time she affixed her signature [to the documents], she had no present or fixed intention in her mind of renouncing her allegiance to this country, and in fact never did intend to divest herself of American citizenship."

(f) "That the plaintiff did not knowingly renounce or relinquish her American citizenship."

None of these findings of fact was questioned by the Court of Appeals.

Summary of Argument

The basic question of law common to the case before this Court for review and the action commenced by the *amicus curiae* is: Can a native born United States citi-

quished her citizenship of birth, it will have been an involuntary relinquishment contrary to her intent and due solely to her mistaken understanding of the legal consequences of her acts. In decreeing this result, it is respectfully submitted, the Court of Appeals fell into error.

ARGUMENT

POINT I

Petitioner did not lose her nationality by reason of obtaining naturalization in a foreign state.

As indicated above, the Court of Appeals in the instant case based its decision on the ground that petitioner had voluntarily obtained Italian citizenship and, regardless of intent or motivation, had thereby violated the provisions both of Section 401 (a) of the Nationality Act of 1940 and Section 2 of the Act of March 2, 1907,* whichever statute was applicable. In this conclusion, it is respectfully submitted, the Court was in error.

(A) Subjective Intent Is Deemed Controlling In Interpreting Those Sections of The Federal Statutes Governing Acquisition of Nationality.

In *Knauer* v. *United States*, 328 U. S. 654 (1946), this Court had under review a proceeding for the cancellation of Knauer's Certificate of Naturalization. Knauer, in obtaining citizenship, had fully complied with all the formal and technical requirements of the statute. The government sought revocation of the Certificate fundamentally on the ground that, in taking his Oath of Alle-

* 8 U.S.C.A. §801 (a) and 34 Stat. 1228, respectively.

giance, Knauer had acted with mental reservations and with no intention of forswearing allegiance to his land of birth or of carrying out the obligations of the Oath. The District Court found in favor of the government and entered an order cancelling Knauer's Certificate. The Court of Appeals affirmed. This Court, after an exhaustive review of the evidence bearing on Knauer's intent, concurred in the findings of the District Court and affirmed the decision below.

See, also,

United States v. *Wurzenberger*, 56 F. Supp. 381 (D.C.D. Conn. 1944);

United States v. *Kramer*, 262 Fed. 395 (C.A.A. 5th 1919);

United States v. *Haas*, 51 F. Supp. 910 (D.C. N.D. N.Y. 1943);

United States v. *Claassen*, 56 F. Supp. 71 (D.C.D. Ind. 1944).

In all of these cases, the alien's state of mind was held controlling in determining whether he had acquired American citzenship. Can it be that Congress intended that a citizen's state of mind should be deemed any less important in determining whether he has given up his citizenship? It is submitted (as borne out by the authorities cited in sub-point "B" below) that Congress did not so intend.

(B) The Court Below Stands Alone in Its Rigid Interpretation of The Federal Statutes Governing Expatriation.

After exhaustive search of the authorities, we have been unable to find any other decision comparable to that

of the Court of Appeals in the case here for review in its strict and uncompromising interpretation of Section 401 of the Nationality Act and the earlier Act of March 2, 1907. With the exception of that decision, the Courts have uniformly accorded these Acts a more liberal interpretation in order to effect their manifest intent and purpose.

We cite but a few of the cases. In the unreported case of *Tucciarone* v. *Marshall*, tried in the District Court for the Southern District of New York in November, 1948 (file #40-293), the defendant claimed that plaintiff, a native born United States citizen, had been expatriated, among other reasons, because of her having voted in a political election in Italy on June 2, 1946 in violation of Section 401 of the Nationality Act of 1940.*

In the course of his opinion, Mr. Justice Conger stated:

> "If we apply the words of the statute literally by simply voting at the election, plaintiff lost her nationality. I feel, however, that the statute should be given a more liberal interpretation.
>
> 'To expatriate oneself clearly involves voluntary action. "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance". Perkins *v.* Elg, 307 U. S. 325, 334 59 S. Ct., 884, 83 L. Ed. 1320.' (Dos Reis ex rel Camara *v.* Nicholls, 161 F. (2d) 868.)
>
> "Certainly intention to expatriate is a fact to be proven. I am satisfied from the evidence that plaintiff never intended to expatriate herself when she voted at the election of June 2, 1946. * * * she never knew that there was a law of the United

* Sub-section (e) of that Act provides that expatriation shall result, among other things, from "voting in a political election in a foreign state * * *." 8 U.S.C.A. §801 (e).

> States which forfeited her citzenship if she did vote. * * *. Viewed in the light of the condition and the state of this woman's mind at the time she voted, I can't say that plaintiff, by so voting, renounced and abandoned her American nationality and allegiance."

In *Dorcau* v. *Marshall*, 170 F. 2nd 721 (C.A. 3, 1948), plaintiff, a native born American married to a Frenchman and residing in France with her husband at the time of the German occupation of France, applied for (and received) a certificate of French nationality because she was advised, in the likely event of war between the United States and Germany, that she would run the risk of internment in a concentration camp, the consequences of which might prove fatal to her and her then unborn child. The Court of Appeals, reversing an order of the District Court dismissing the complaint, after reviewing a number of authorities, said at page 724:

> "We think the rationale of the above decisions is sound. If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. *He cannot be truly said to be manifesting an intention of renouncing his country.*" (Emphasis ours.)

In the case of *Perkins* v. *Elg*, the Court of Appeals for the District of Columbia, 99 F. 2nd 408 (1938), said at page 412:

> "* * * expatriation is a matter of intent on the part of the person concerned, which intent must be shown by some express act or some other act from which it can be gathered."

This Court, in affirming the Court of Appeals, 307 U. S. 325 (1939) by Chief Justice Hughes said at page 334:

> "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance."

and at page 337:

> "Rights of citizenship are not to be destroyed by an ambiguity."

In the case of *Von Moltke* v. *Gillies*, 332 U. S. 708 (1948), this Court had to consider the relinquishment of another (and certainly no more precious) constitutional right—the right to representation by counsel. In considering whether petitioner should be relieved of the consequences of her written waiver of counsel, the Court explored the petitioner's degree of understanding of her acts and said, at page 724:

> "* * * To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter."

and concluded at page 276:

> "The admitted circumstances here cannot support a holding that petitioner intelligently and understandingly waived her right to counsel."

Citizenship in the United States is one of the most precious possessions of a native born American. The legislature, in enacting the Nationality Act of 1940, was careful to preserve the right of any American citizen, who might deliberately choose to do so, to expatriate himself and become naturalized in another country (8 U.S.C.A., §800). It cannot be assumed, however, that the

legislature intended that expatriation should be forced on a citizen who had no desire or intention of renouncing his citizenship simply because he may have unwittingly transgressed one of the technical provisions of the Act.

To paraphrase Chief Justice Hughes in *Perkins* v. *Elg*, *supra*:

> "Rights of citizenship are not to be destroyed by a technicality."

POINT II

Petitioner did not lose her nationality by reason of taking an oath of allegiance to a foreign state.

The Court below did not find it necessary to consider whether petitioner's act, in signing an oath swearing allegiance to the King of Italy, was sufficient to result in her expatriation under Section 401 (b) of the Nationality Act of 1940 or Section 2 of Act of March 2, 1907. However, against the possibility that respondent may, on this review, urge that point as a ground for affirmance, we will briefly consider the argument.

All that petitioner did in the instant case in this connection was to sign a document which contained the words of an Oath of Allegiance to the King of Italy. This document was written in Italian, a language which petitioner could not read and did not understand, and its contents were not explained to her. According to the evidence, the usual formalities of reciting words and raising the hand were not observed. The District Court has found that at the time she signed the document, she had no intention of renouncing her American citizenship and that, relying on Savorgnan's statement and assurances, she believed that her American citizenship was in no way being endangered.

In *O'Reilly* v. *The People of the State of New York*, 86 N. Y. 154 (1881), the New York Court of Appeals, after reviewing at some length the history and development of the law relating to oaths, and, after pointing out the various relaxations that had been made over the years, concluded that the requirement of oral recitation of the oath was not a formality which could be dispensed with. The Court went further and said (at p. 161) that, to constitute a valid oath,

> "* * * there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act, by which the affiant consciously takes upon himself the obligation of an oath."

See, also,

> *Bookman* v. *City of New York*, 200 N. Y. 53 (1910), *In the Matter of E, I & N* Decisions, 548 (1943); *In re Gogal*, 75 F. Supp. 268 (1947).

In *Knauer* v. *United States*, *supra*, this Court, in the course of its opinion, stated (at p. 671):

> "It [the oath] relates to a state of mind and is a promise of future conduct. It is the final act by which an alien acquires the status of citizen. It requires foreswearing of allegiance in good faith and with no mental reservations. * * *"

Certainly the mere signing of a document in a foreign language, the contents of which are unknown to the signer, could not be deemed the taking of an oath sufficient to deprive one of his citizenship under Section 401(b) of the Nationality Act of 1940, or under the earlier Act of March 2, 1907.

Conclusion

As recently stated by this Court in the case of *Klapprott v. United States*, 335 U. S. 601 (1949), at page 616:

> "To take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others."

It seems clear that Congress, in specifying the act of obtaining naturalization in a foreign state as an act resulting in the forfeiture of citizenship, must have conceived of that act not as a mere thoughtless formality, but as an act of real substance—at a minimum, as a positive, voluntary and conscious shifting of loyalties from this nation to another. Certainly, Congress never intended that the casual act of a bride-to-be, aimed solely at the removal of technical barriers to her marriage, and performed in the belief that it would in no way endanger her American citizenship, should result in the harsh penalty of involuntary expatriation.

To answer the question propounded at the outset of this brief, it is respectfully submitted that a native born United States citizen who has in no way failed in her duties and loyalty to this country, cannot lose her United States citizenship by mistake, and that the decision below is erroneous and should be reversed.

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APPENDIX

Statutes Involved.

Section 2 of the Act of March 2, 1907, (34 Statutes 1228, 8 U.S.C.A., Section 17, 1934 Edition) provides in part as follows:

> "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

Section 401 of the Nationality Act of 1940 (8 U.S.C.A., Section 801) provides in part as follows:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;
>
> (b) Taking an oath or making an affirmation or other formal declaration to a foreign state * * *."